forfeit nor refund the deposit if the plaintiff insisted on having the house, which the plaintiff did. On June 11 he posted to the developers the letter AR59 enclosing a cheque for $1,900 — which added to the $700 already paid would have come to $2,600, being 10% of the $26,000, the original price. Finally the plaintiff asked the developers when he might call at their office to sign the agreement. By letter dated June 13, AR60, the developers returned the cheque, saying that they did not agree with the plaintiff's contention. By letter dated June 21, AR61, the plaintiff insisted that the developers were in breach of their agreement. By letter of June 24, AR62, to the plaintiff, the developers contended that what had been signed was only a booking *pro forma*, not an agreement, and further explained the increase in price as follows:

"The increase in the price has to be made in view of the *amendments to the building plans* and to the over-all development of our housing scheme. We contend that the increase is very reasonable *compared to the current prices* of houses in Johore Bahru."

By letter of August 20, AR63, the plaintiff stuck to his gun. He contended that under the booking *pro forma* the amendments to the plan of the house were for the worse, not better, and that the intending purchaser only agreed to amendments required "by the Authorities", not otherwise.

By letter of August 23, AR64, the developers gave formal notice that unless the further sum of $2,810 was paid they would cancel the booking and refund the booking fee.

On September 2 the plaintiff — this time through solicitors — wrote, insisting that the developers honour their bargain, and asking them to send the agreement stating therein the agreed price, for signature by the plaintiff. The developers did not send the agreement: by letter of September 6 they said that they were "not being unreasonable as you will note the wide difference in our price compared with the current prices of other houses now being sold by other developers in Johore Bahru."

On October 16, 1975, the plaintiff filed suit.

The learned judge gave judgment for the plaintiff and ordered the developers on payment of the balance of the purchase price to transfer the property to the plaintiff.

In our respectful view the learned judge was quite right.

The issue was whether the booking *pro forma* was a mere agreement to agree, as the defendants contended, or a firm contract of sale of the property, as the plaintiff contended. In our judgment, the *pro forma* was a firm contract. It identified the parties, it specified the property to be bought and its price. True, the plaintiff was required to sign an agreement of sale to be prepared by the developers' solicitors and subject to the terms and conditions therein; but in fact the developers never showed the plaintiff the draft of any agreement. All the developers did was to announce unilaterally an increase in price for reasons which could not, in our view, affect the price to be paid by the plaintiff. The developers are bound by the Housing Developers (Control and Licensing) Rules, 1970, published as P.U.(A) 268 of 1970, and only details may be inserted into the further agreement. These details were never put to the plaintiff and he never had an opportunity to consider them; it was only after the plaintiff had rejected the draft of the further agreement that the developers might — we say might deliberately — call off the sale.

The *pro forma* allowed that price to be varied only in two ways: first, under Condition 2, if the price was changed because of alterations and amendments to the developers' layout and building plans and specifications required "by the Authorities". In the event of major alterations and amendments being made to the layout plan — which had the effect of increasing the price of the house — the plaintiff would have the right to cancel his booking and recover his deposit. It is to be noted that this condition gave the developers the right to effect alterations and amendments required by the authorities, irrespective of whether the plaintiff agreed or not, and gave the plaintiff the right to withdraw and recover his deposit in the event of major alterations and amendments to the layout plan; but it did *not* give the developers the right to increase unilaterally the price of the house as a result of these alterations and amendments.

Secondly, under Condition 4, the developers had the right to increase the price should the land turn out to be bigger than originally thought.

Apart from the above, we do not think that the developers could in any way change the price stated in the *pro forma*.

For the above reasons we dismissed these appeals.

We considered the application of the developers for a stay of execution pending further appeal and the objections on behalf of the plaintiff and decided that in the circumstances no further stay should be granted.

Appeals dismissed.

Solicitors: *A.L. Looi & Co.; Nik Hussain, Ibrahim & Abdullah.*

KULASINGAM v. PUBLIC PROSECUTOR

[F.C. (Suffian L.P., Gill C.J. (Malaya), Lee Hun Hoe C.J. (Borneo), Raja Azlan Shah and Wan Suleiman F.JJ.) May 15 and August 3, 1978]

[Kuala Lumpur — Federal Court Criminal Application No. 1 of 1978]

Criminal Law and Procedure — Reservation of question of law for decision of Federal Court — Application refused in the High Court — Whether appeal lies to Federal Court — Federal Constitution, arts. 125A, 128 & 130 — Courts of Judicature Act, 1964, ss. 50, 66 & 74.

Constitutional Law — Jurisdiction of Federal Court — Whether appeal lies to Federal Court from refusal of High Court to reserve question of law for decision of Federal Court — Courts of Judicature Act, 1964, ss. 50, 66 & 74 — Federal Constitution, arts. 125A, 128 & 130.

In this case the accused had been convicted on appeal in the High Court on a charge of criminal breach of trust contrary to section 409 of the Penal Code. An application was made to the learned judge of the High Court for certain questions of law of public interest to be referred to the Federal

Court but the application was dismissed. The accused thereupon applied for special leave to appeal from the decision of the learned judge. The issue was whether an appeal lay from the decision of a High Court judge dismissing an application of a person to reserve for the question of the Federal Court a question of public interest which had arisen in the course of an appeal by that person.

Held, dismissing the application: a person cannot appeal from the decision of a High Court judge dismissing his application under section 66 of the Courts of Judicature Act, 1964.

Cases referred to:

(1) *Arnold* v. *The King Emperor* [1914] A.C. 644.

(2) *Lanier* v. *Rex* [1914] A.C. 221.

(3) *Falkland Islands Co.* v. *Reg.* 1 Moo P.C. (N.S.) 299.

(4) *King-Emperor* v. *Vimlabai Deshpande* 73 I.A. 144.

(5) *Mary Ng* v. *Reg.* [1958] M.L.J. 108.

FEDERAL COURT.

N. Ramachandran for the applicant.

T.S. Sambanthamurthi (Deputy Public Prosecutor) for the respondent.

Suffian L.P. (delivering the judgment of the Court): The issue here is whether an appeal lies from the decision of a High Court judge dismissing the application of a person under section 66 of the Courts of Judicature Act, 1964, to reserve for the decision of the Federal Court a question of law of public interest which has arisen in the course of an appeal by that person.

The applicant, a clerk in the Education Department in Seremban, was charged with C.B.T. contrary to section 409 of the Penal Code and the learned President acquitted him. On appeal by the Public Prosecutor, the learned High Court judge found him guilty, and convicted and sentenced him to one year's imprisonment.

The applicant applied to the learned judge for certain questions of law of public interest to be referred to this court under section 66 of the Courts of Judicature Act, 1964, which application the learned judge dismissed.

Whereupon the applicant applied to us for special leave to appeal from the decision of the learned judge.

In answer to the objection we raised whether we had jurisdiction to entertain this application, Mr. Ramachandran argued that we had because, he said, of two grounds:

(1) under the new article 125A(1)(a) of the constitution added by Act A354 of 1976, which reads:

"125A. (1) Notwithstanding anything contained in this Constitution, it is hereby declared that —

(a) the Lord President of the Federal Court and a judge of the Federal Court may exercise all or any of the powers of a judge of a High Court."

the Lord President and a judge of the Federal Court have the same power as a judge of the High Court, so this court has power to revise the decision of the High Court in the same way as the High Court has power to revise a decision of a subordinate court; and

(2) the abolition of criminal appeals to the Privy Council results in equating this court with the Privy Council and has not abolished the subject's right to appeal to his sovereign.

As regards ground (1), in our judgment the new article 125A(1)(a) refers to the power of the Lord President or a judge of the Federal Court when sitting individually in the High Court, and not to their power when sitting collectively in the Federal Court. Thus the Lord President or a Federal Judge may sit to try cases in the High Court in the same way as a judge of the High Court. That article alone does not intend to confer on the Federal Court all the powers of the High Court.

As regards ground (2), Mr. Ramachandran cited *Arnold* v. *The King Emperor*[1] and *Lanier* v. *Rex*.[2] In the first case occurs at page 646 this passage from the judgment of Lord Kingdown in the case of *Falkland Islands Co.* v. *Reg.*[3] cited with approval by Lord Shaw of Dumferline:

"It may be assumed that the Queen has authority by virtue of her prerogative to review the decision of all colonial courts, whether the proceedings be of a civil or criminal character, unless Her Majesty has parted with such authority."

Sir John Beaumont stated the principle that governs appeals to the Privy Council in *King-Emperor* v. *Vimlabai Deshpande*[4] as follows:

"The broad principle... is that appeals from decisions of courts in the British Dominions and dependencies to the King in Council are heard under the royal prerogative, and that the prerogative can only be curtailed by force of an Act of Parliament, that is, by the King in Parliament." (page 152).

Mr. Ramachandran mentioned as an example *Mary Ng* v. *Reg.*[5] a Singapore case, where the accused after losing her appeal to the High Court from conviction by a District Court, appealed straight to the Privy Council without going through the Singapore Court of Appeal. Mr. Ramachandran tried to persuade us that similarly as the Yang di-Pertuan Agong's judges, we have power to entertain this application.

In our judgment, the principle stated by Lord Shaw and Sir John Beaumont applies only to the British sovereign's authority over her dependences *overseas*, and probably this court would adopt the same principle in the unlikely event of the Yang di-Pertuan Agong having colonies and protectorates and so on. In our judgment, the principle that we should apply here is the one that applies in respect of appeals by subjects *within* the United Kingdom, in regard to whom there is no inherent right of appeal from a lower to a higher court, so that the subject may appeal if and only if statute so provides. Statute there provides for appeal to, among others, the Court of Appeal, and the subject could not appeal direct to the highest court, the House of Lords, without first going through the Court of Appeal — until a recent Act of Parliament allowing an appellant to "leapfrog" the Court of Appeal in certain circumstances.

Here the jurisdiction of the Federal Court is governed by the Constitution and statute, and is of four kinds:

(a) appellate jurisdiction,

(b) exclusive original jurisdiction under article 128(1) of the Constitution,

(c) referral jurisdiction under article 128(2), and

(d) advisory jurisdiction under article 130.

The last three kinds of jurisdiction do not apply, and so, if at all, only jurisdiction of kind (a) applies, which is governed, as regards criminal matters, by section 50(1) of the Courts of Judicature Act, 1964, which, as amended by Act A328, reads:

"50 (1) The Federal Court shall have jurisdiction to hear and determine any appeal against any decision made by the High Court in the exercise of —

(a) its original criminal jurisdiction; or

(b) its appellate criminal jurisdiction in respect of an appeal from a decision of a president of a Sessions Court who is conferred with special jurisdiction under subsection (3) of section 63 of the Subordinate Courts Act, 1948,

subject to this or any other written law regulating the terms and conditions upon which criminal appeals may be brought."

By no stretch of the imagination can it be said that the accused's application comes within the above, seeing that what he is dissatisfied with is a refusal by the learned High Court judge to grant a certificate under section 66 of the Courts of Judicature Act.

Finally, if it is true that this court is now as regards criminal matters on a par with the Privy Council, it is not true to say that Parliament has not abolished the subject's right to appeal to the Yang di-Pertuan Agong. Legally, an appeal to London is not an appeal to the Privy Council but one to the Yang di-Pertuan Agong, as is clear from the old subsection (2) of section 74 of the Courts of Judicature Act, 1964, which read:

"(2) An appeal shall also lie from the Federal Court to the *Yang di-Pertuan Agong* in the following cases, namely:

(a) in any case mentioned in sub-section (1) of this section where the leave of the court has not been duly obtained; and

(b) in any case arising in a civil matter other than the cases referred to in sub-section (1); and

(c) in any criminal matter,

where application for special leave to appeal has been made to the Yang di-Pertuan Agong, and the Yang di-Pertuan Agong, acting on the recommendation of the Judicial Committee, has granted special leave to appeal."

When Parliament by Act A328 deleted the words "in any criminal matter" in paragraph (c), they clearly showed that they intended to abolish the right of the subject to make a last appeal to *His Majesty*.

For the above reasons we were of the opinion that a person cannot appeal from the decision of a High Court judge dismissing his application under section 66, and accordingly dismissed this application.

Application dismissed.

Solicitors: *N. Ramachandran & Co.*

CHAI YEN v. BANK OF AMERICA NATIONAL TRUST & SAVINGS ASSOCIATION

[F.C. (Raja Azlan Shah Ag. C.J. (Malaya)), Wan Suleiman and Chang Min Tat F.JJ.) May 31 and August 16, 1978]

[Kuala Lumpur — Federal Court Civil Appeal No. 143 of 1976]

Practice and procedure — Appeal — Time for appeal — Order made in chambers — Whether time runs from the date of the order or of the decision not to require further arguments — R.S.C. 1957, O. 54 r. 22A — Federal Court (Appeals) (Transitional) Rules, 1963.

In this case the respondents had obtained an order in chambers for the sale of certain lands charged by the appellant to the respondents under the National Land Code. The order for sale was made on September 6, 1976 after the learned judge had heard and considered certain contentious arguments. The sale was fixed for December 12, 1976. The appellants applied on September 8, 1976 to the judge for further arguments but it was on October 14, 1976, that the learned judge decided that he did not require further arguments and to issue a certificate to that effect. Notice of appeal was filed and served on the respondents on November 1, 1976. It was argued that the appeal had not been brought before the Federal Court within the meaning of rule 13 of the Federal Court (Appeals) (Transitional) Rules, 1963 as notice of appeal was filed and served more than one month from the date of the order appealed from.

Held: in the case of an order made in Chambers in which an application under Order 54 rule 22A had been lodged within time, the time to appeal would run from the date, not of the order but of the decision not to require further arguments, and on the facts of this case, the appeal had been properly brought to the court.

FEDERAL COURT.

G.T. Rajan for the appellant.

K. Thayalan for the respondent.

Chang Min Tat F.J. (delivering the judgment of the Court): A preliminary objection is taken to this appeal by the respondents who argue that the appeal has not been brought before the Federal Court within the meaning and scope of rule 13, Federal Court (Civil Appeals) (Transitional) Rules 1963. The argument is founded on the fact that the notice of appeal was filed and served more than one month from the order now appealed from and the appeal cannot now lie in this court without the special leave of the full court and of this leave, there is none and none is being applied for.

The relevant order is an order for sale of certain lands charged by the appellant to the respondents under the National Land Code. The application for foreclosure was made in an originating summons and consequently heard in chambers. The order for sale was made on September 6, 1976, after the learned judge had heard and considered certain contentious arguments. The sale was fixed for December 12, 1976. Notice of appeal was filed in court on November 1, 1976, and a copy thereof was served on the respondents on the same day, considerably more than the one month specified.

Had the matter stopped here, this court will have, on the present rules and on the authority of its previous and other decisions from which it can see no valid reason to depart, no other course than to rule that there is no appeal before it. But counsel for the appellant asks us to consider the effect of the application for further arguments which the appellant made by letter dated September 8, 1976, well within the 4 days allowed under Order 54 rule 22A Rules of the Supreme Court. He contends that such an application has the practical effect of making what may be a final order not a final order for the purposes of lodging the notice of appeal. He draws the attention of this court to the fact that the learned judge only decided on October 14, 1976 not to require further arguments and to issue a certificate to this effect on the same date. Necessarily therefore, filing